

USSN 09/855,403

Amendment responsive to Office Action mailed on August 18, 2006

September 19, 2006

A-1669

REMARKS

Claims 1 and 23 have been amended. Claims 7-8, 11-12, 14-22, and 24-31 are canceled, and claims 32-45 have been added. Thus, claims 1-6, 9-10, 13, 23, and 32-45 are pending in the application.

Applicants greatly appreciate the Examiner's indication that claims 10 and 13 are allowed.

Claim 1 has been amended to address the antecedent basis issue raised by the Examiner. This issue has now been resolved, and this grounds for rejection should be withdrawn.

Claims 1-9, 22 and 23 are newly rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Applicants do not understand why this rejection was not raised much sooner during the prosecution of this application, which has extended over nearly four years. Moreover, Applicants do not understand the basis for the rejection. All of the claim limitations are clearly supported and described in the specification and drawings, as the Examiner explicitly admits. So there is no question that Applicants had possession of the invention at the time the application was filed. See, for example, page 8, line 22 through page 9, line 24, and Figs. 2-6. It should also be noted that the claims the Examiner is complaining about are original claims, and thus are actually part of the written specification. See *In re Gardner*, 178 USPQ 149 (CCPA 1973). Thus, the rejection is clearly improper and should be withdrawn.

The Examiner's actual concern appears to be a confusion as to whether it is possible to mold an object wherein the exterior configuration is rounded (cylindrical or conical) and the interior configuration is planar with angled transitions, as shown and claimed in the present application. Of course, the answer is yes. There is no reason why a mold cannot be designed which permits such a construction. Accordingly, the Examiner's concern is misplaced, and, again, the rejection should be withdrawn.

Applicants note, for the record, that the external configuration of the device, as shown in Fig. 1, is beyond the scope of the present invention. Applicants simply do not care about the external configuration. Fig. 1 is present in the application for illustrative

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purposes only, to help the reader understand the context of the invention, and no claims are directed to the external configuration. It may be a combination of conical and cylindrical shapes, as assumed by the Examiner, or it may be more polygonal and faceted, thus more closely matching the interior configuration shown in Figs. 2-6.

In short, therefore, it is abundantly clear that the specification and drawings fully support the claim limitations, and that the rejection of some of the claims under 35 U.S.C. 112, first paragraph is improper and should be withdrawn.

Claims 1, 2, 7-9, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gupte et al. '130. At the outset, it is noted that independent claim 22 has been canceled. Independent claim 1 has been amended to include the limitations of claims 7 and 8. The claim has also been amended to recite that the interior walls which define the interior volume comprise a plurality of generally planar wall segments and angled transition zones are disposed between adjacent ones of the wall segments.

Looking specifically at the limitations of claim 1, as amended, the claim recites a spacer member fluidly attached to the mouthpiece through a mouthpiece port, an air inlet port disposed in the spacer member for receiving air into the mixing chamber, and an inlet port disposed in the spacer member for receiving a medicated aerosol. Gupte et al. discloses a spacer member having a mouthpiece port and a medicated aerosol inlet port, but it does not disclose a separate air inlet port for the spacer member. Thus, claim 1 is clearly not anticipated by Gupte et al. Moreover, Gupte et al. obviously does not disclose or suggest the use of an adapter, as claimed, in the inlet port which includes a universal fitting and is reversible, as claimed. Thus, claim 1, as well as claims 2-6, 9, and 23, dependent therefrom, are clearly allowable over Gupte et al.

Claims 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupte et al. '130 in view of Rowland '232. This rejection must be withdrawn for the reasons discussed above, as Rowland does not supply the above noted missing teachings, and these claims are dependent upon allowable claim 1.

Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupte et al. in view of Watt '571. This rejection must also fall for the reasons discussed above. The Examiner apparently believes that Watt discloses a reversible universal adapter of

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the type recited in claim 1, but Applicants cannot find this element in the Watt patent. Regarding claim 9, there is no disclosure or suggestion in Watt '571 of the claimed interchangeability feature.

Claims 1-9 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watt '571 in view of Gupte et al. '130. However, for the reasons discussed above, respective to the rejection of claims 5-9 based upon a combination of Gupte et al. and Watt, this rejection cannot stand and must be withdrawn.

Applicants therefore respectfully submit that this application is in condition for allowance, in view of the amendments and arguments presented above. The Examiner is requested to contact the undersigned at the number below, should any further questions or issues need to be resolved.

Respectfully submitted,



Donald E. Stout  
Reg. No. 34,493

September 19, 2006  
4 Venture, Suite 300  
Irvine, CA 92618  
Telephone (949) 450-1750  
Facsimile (949) 450-1764